

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

INTELLECTUAL VENTURES I LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 10-1067 (LPS)
)	
CHECK POINT SOFTWARE)	REDACTED - PUBLIC VERSION
TECHNOLOGIES LTD., CHECK POINT)	
SOFTWARE TECHNOLOGIES, INC.,)	
MCAFEE, INC., SYMANTEC CORP.,)	
TREND MICRO INCORPORATED, and)	
TREND MICRO, INC. (USA),)	
)	
Defendants.)	
<hr/>		
INTELLECTUAL VENTURES I LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 12-1581 (LPS)
)	
TREND MICRO INCORPORATED, and)	REDACTED - PUBLIC VERSION
TREND MICRO, INC. (USA),)	
)	
Defendants.)	

**DECLARATION OF MICHAEL J. FLYNN IN SUPPORT
DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION TO
SEVER AND STAY CLAIMS RELATED TO U.S. PATENT NO. 6,460,050
PENDING CONCLUSION OF *INTER PARTES* REEXAMINATION**

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Thomas C. Grimm (#1098)
Karen Jacobs (#2881)
Michael J. Flynn (#5333)
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mflynn@mnat.com
Attorneys for Defendants

I, Michael J. Flynn, declare as follows:

1. I am an attorney duly licensed to practice law in the State of Delaware and am a member of the bar of this Court. I am an attorney with Morris, Nichols, Arsht and Tunnel LLP, counsel for Defendants Symantec Corporation, Trend Micro Incorporated and Trend Micro, Inc. (USA) (collectively, "Defendants"). I have knowledge of the following and, if called as a witness, could and would testify competently to the contents of this declaration.

2. Attached as Exhibit G is a true and correct copy of the document titled "April 2014 Patent Trial and Appeal Board (PTAB) Data," downloaded from the U.S. Patent and Trademark Office website at <http://www.uspto.gov/dashboards/patenttrialandappealboard/main.dashxml>.

3. Attached as Exhibit H is a true and correct copy of the petition for extension of time filed by Intellectual Ventures in the *inter partes* reexamination of U.S. Patent No. 6,460,050, dated May 2, 2014.

4. Attached as Exhibit I is a true and correct copy of an article titled "Intellectual Ventures to Seek \$3 Billion for Patent Fund," published by Bloomberg, dated August 28, 2013, downloaded from <http://www.bloomberg.com/news/2013-08-28/ex-microsoft-cto-to-seek-3-billion-for-patent-fund.html>.

5. Attached as Exhibit J is a true and correct copy of a report from Lex Machina of patent cases brought by Intellectual Ventures I LLC and pending before the U.S. District Court for the District of Delaware as of May 29, 2014.

6. Attached as Exhibit K is a true and correct copy of excerpts of the Rebuttal Expert Report of Eugene Spafford, Ph.D. Regarding Non-Infringement of U.S. Patent Nos. 6,987,610, 7,506,155, 6,460,050, and 6,073,142, dated March 20, 2013.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and ability. Executed on May 30, 2014 in Wilmington, Delaware.

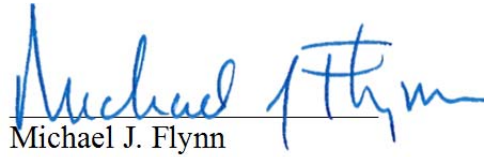

Michael J. Flynn

EXHIBIT G

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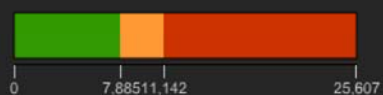


April 2014 Patent Trial and Appeal Board (PTAB) Data



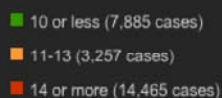
Ex Parte Appeals

What is this?



APPEAL INVENTORY

Months in this status

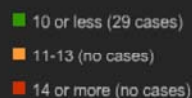


See the last three years



REQUESTS FOR RE-HEARING

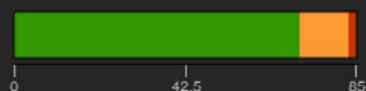
Months in this status



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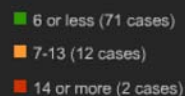
Ex Parte Reexamination

What is this?



APPEAL INVENTORY

Months in this status

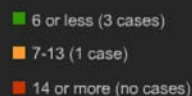


See the last three years



REQUESTS FOR RE-HEARING

Months in this status



See the last three years

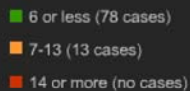
Inter Partes Reexamination

What is this?

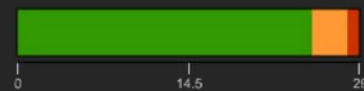


APPEAL INVENTORY

Months in this status

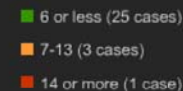


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REQUESTS FOR RE-HEARING

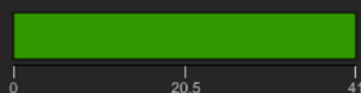
Months in this status



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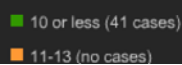
Interference Aging

What is this?



INTERFERENCE AGING CASES

Months in this status



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EXHIBIT H

***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES***

Re-Exam: U.S. Patent No. 6,460,050 PACE, *et al.*
Title: DISTRIBUTED CONTENT IDENTIFICATION SYSTEM
Re- Exam 95/002,202
Control No.:
Filing Date: September 12, 2012
Examiner: Minh Dieu T. Nguyen
Art Unit: 3992
Conf. No.: 9878

PATENT OWNER'S PETITION UNDER 37 C.F.R. § 1.956 FOR EXTENSION OF TIME

Mail Stop *Inter Partes* Reexam
Central Reexamination Unit
Office of Patent Legal Administration
United States Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

This communication is a petition under 37 C.F.R. § 1.956 requesting a four-week extension of time to respond to the Action Closing Prosecution (hereinafter “ACP”) dated April 15, 2014. If granted, the petition would extend the deadline for a response to June 12, 2014. The petition fee set forth in 37 C.F.R. § 1.17(g) is paid herewith by credit card authorization. In support of this petition, the Patent Owner states as follows:

(A) Action Taken To Date:

The ACP dated April 15, 2014, is 57 pages long and includes 17 specific responses/decisions by the Examiner with respect to various arguments presented in the initial Office Action Response dated February 11, 2013. In addition to these various responses/decisions from the Examiner is a reiteration of five distinct rejections from the initial

Office Action. The ACP also includes 33 new prior art rejections of amended and new claims and two new rejections under 35 U.S.C. § 112 for various other claims. Furthermore, the 33 new prior art rejections include 7 newly applied references.

Since the ACP was issued on April 15, 2014, the Patent Owner has been diligently working toward providing a response. Outside counsel for the Patent Owner has communicated with its external expert Dr. Wenke Lee regarding potential response arguments and strategies. In addition, outside counsel for the Patent Owner has had several communications with internal counsel for the Patent Owner regarding response strategy. The Patent Owner has begun reviewing the substantial number of rejections and new references and outlining arguments for the response. In addition, the Patent Owner has begun developing various legal arguments for the response.

(B) Why An Extension of Time is Requested

The Patent Owner requests a four-week period of additional time to draft a full response to the ACP. In drafting such a response, the Patent Owner must prepare response for each of the 33 new prior art rejections (including the associated 7 newly cited references) and two new § 112 rejections in addition to the maintained original 5 prior art rejections. In preparing these responses, the Patent Owner must thoroughly review the ACP, the Third Party Requester Comments, the Third Party Requester's Expert Declaration and Exhibits, and the 120+ page claim chart provided by the Third Party Requester and largely adopted by the Examiner in the ACP. In addition, the Patent Owner must continue to review the hundreds of pages of previously considered documents such as U.S. Patent No. 6,460,050 (hereinafter "the '050 Patent"), the original references again cited in the ACP, and the original Request for Inter Partes Reexamination and accompanying documents.

Furthermore, the Patent Owner is currently working with its expert Dr. Wenke Lee to respond to the ACP and to determine if an additional declaration from Dr. Lee is required. The response and/or declaration would likely respond to the Third Party Requester's Declaration and the additional arguments/responses presented by the Third Party Requester in the Third Party Comments and by the Examiner in the ACP. In addition, Dr. Lee currently has a conference

Reexam Control No.: 95/002,202
Patent Owner Docket No. 098888-7899
U.S. Patent No. 6,460,050

submission deadline of May 16, 2014, and thus is currently busily preparing a paper to meet this conference submission deadline. Accordingly, the current ACP response deadline of May 15, 2014, presents a tremendous hardship to Dr. Lee and greatly limits the amount of time for which he is available to review the 33 new prior art rejections, 7 newly cited references, the Examiner's responses, and the original rejections and references.

Furthermore, during the time period between April 15, 2014, and the ACP filing deadline of May 15, 2014, the Patent Owner was involved in preparing responses/actions for seven other post grant proceedings. In addition, the Patent Owner is currently involved in fourteen post grant proceedings (13 reexaminations and one inter partes review proceeding), two of which were initiated by the Third Party Requester. In view of the demands of these concurrent post grant proceedings, the current response deadline of May 15, 2014, places a tremendous hardship on the Patent Owner and Dr. Lee in preparing a response to the ACP prior to the current deadline.

In view of the foregoing reasons, the Patent Owner requests additional time to gather evidence and prepare a complete response to the ACP relating to the patentability of the '050 Patent claims including a declaration from Dr. Lee. Accordingly, the Patent Owner requests an additional four weeks to respond to the ACP dated April 15, 2014, i.e., until June 12, 2014.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this matter, or credit any overpayment, to Deposit Account No. 19-0741.

Respectfully submitted,

Date May 2, 2014

FOLEY & LARDNER LLP
Customer Number: 23524
Telephone: (608) 258-4292


By 
Paul S. Hunter
Attorney for Patent Owner
Registration No. 44,787

EXHIBIT I

Bloomberg

Intellectual Ventures to Seek \$3 Billion for Patent Fund

By Sabrina Willmer - Aug 28, 2013

Intellectual Ventures Management LLC, led by a former chief technology officer of [Microsoft Corp. \(MSFT\)](#), is seeking \$3 billion for a fund that would give it steady cash flow from patents and invention rights, according to an investor presentation obtained by Bloomberg News.

Invention Investment Fund III will purchase patents, patent licensing rights and applications as well as other invention rights, according to the April presentation from the Bellevue, Washington-based firm. The firm, founded in 2000, has historically made some of its money from suing over patent infringements.

Mercury Capital Advisors LLC, an advisory firm that helps firms raise money from institutional investors, is the fund's placement agent. Kyle Mahoney, a spokesman for Intellectual Ventures, declined to comment on the fundraising.

Intellectual Ventures is among a growing number of investment firms seeking to take advantage of investor appetite for predictable cash flow. Last week, Harbert Management Corp. announced a separate account with California Public Employees' Retirement System, the largest U.S. pension fund, that will provide cash distributions from contracts to sell power plants' capacity and energy.

Intellectual Ventures was founded by Nathan Myhrvold, former chief strategist and chief technology officer at Microsoft, along with Edward Jung, Peter Detkin and Greg Gorder.

Firm's Founders

Jung, who is Intellectual Ventures' CTO, was previously chief software architect and adviser to executive staff at Microsoft. Detkin was a vice president and assistant general counsel at Intel Corp., where he managed the company's patent and licensing departments, and Gorder was a partner at law firm Perkins Coie LLP.

Like previous funds, the firm's new offering will primarily make investments in technology invention rights. The firm makes its money from legal settlements, strategic sales of portfolios, retail licensing and subscription-based licensing, according to the presentation. This year, it has

brought lawsuits for patent infringement against several companies, including HSBC Holdings Plc, SunTrust Bank Inc., JPMorgan Chase & Co., Motorola Mobility Holdings LLC and [Toshiba Corp. \(6502\)](#)

Intellectual Ventures and RPX Corp. this year led a group of companies that bought license rights to Kodak's digital-imaging portfolio for \$527 million. Kodak used the proceeds to pay off bankruptcy debt.

Management Fee

The new fund will have a 20-year life, according to the presentation, which is twice as long as an average private-equity fund. The fund will charge a 2 percent management fee on committed capital for 10 years.

The goal for the firm's third fund is larger than the \$2.8 billion Intellectual Ventures raised for its previous vehicle in 2008. The firm made 240 investments out of Fund II last year, according to the presentation.

The firm's 2008 and 2003 vehicles were producing average annual cash yields of 12 percent and 19 percent as of Dec. 31, respectively, the presentation shows.

Intellectual Ventures manages six funds with total committed capital of about \$6 billion. In 2010, it raised a "global good fund" focused on solving problems in the developing world and a second "invention science fund" that invests in inventions.

To contact the reporter on this story: Sabrina Willmer in [New York](#) at swillmer2@bloomberg.net

To contact the editor responsible for this story: Christian Baumgaertel at cbaumgaertel@bloomberg.net

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EXHIBIT J

Lex Machina						
Courts & Judges Counsel Parties Cases Documents Patents ITC						
Parties						
Showing 19 open IP cases with Intellectual Ventures I LLC as a party; in D.Del.; filed between 2000-01-01 and 2014-05-29.						
				Order by	most recent docket activity ▾	
Title	Civil Action #	Venue	Filed	Last Docket	Terminated	
Intellectual Ventures I LLC v. United States Cellular Corporation	1:13-cv-01636	D.Del.	2013-10-01	2014-05-29	—	
Intellectual Ventures I LLC et al v. Canon Inc. et al	1:11-cv-00792	D.Del.	2011-09-09	2014-05-29	—	
Intellectual Ventures I LLC v. Nextel Operations Inc. et al	1:13-cv-01634	D.Del.	2013-10-01	2014-05-29	—	
Intellectual Ventures I LLC v. T-Mobile USA Inc. et al	1:13-cv-01632	D.Del.	2013-10-01	2014-05-29	—	
Intellectual Ventures I LLC et al v. AT&T Mobility LLC et al	1:12-cv-00193	D.Del.	2012-02-16	2014-05-29	—	
Intellectual Ventures I LLC et al v. Canon Inc. et al.	1:13-cv-00473	D.Del.	2013-03-25	2014-05-29	—	
Intellectual Ventures I LLC v. Symantec Corp.	1:13-cv-00440	D.Del.	2013-03-18	2014-05-28	—	
Intellectual Ventures I LLC et al v. Nikon Corporation et al	1:11-cv-01025	D.Del.	2011-10-26	2014-05-28	—	
Intellectual Ventures I LLC v. Trend Micro Incorporated et al	1:12-cv-01581	D.Del.	2012-11-21	2014-05-27	—	
Intellectual Ventures I LLC v. Symantec Corporation et al.	1:10-cv-01067	D.Del.	2010-12-08	2014-05-27	—	
Intellectual Ventures I LLC et al v. Motorola Mobility LLC	1:11-cv-00908	D.Del.	2011-10-06	2014-05-22	—	
Intellectual Ventures I LLC et al v. Nextel Operations Inc. et al	1:13-cv-01670	D.Del.	2013-10-07	2014-05-21	—	
Intellectual Ventures I LLC et al v. T-Mobile USA Inc. et al.	1:13-cv-01671	D.Del.	2013-10-07	2014-05-21	—	
Intellectual Ventures I LLC et al v. AT & T Mobility LLC et al	1:13-cv-01668	D.Del.	2013-10-07	2014-05-21	—	
Intellectual Ventures I LLC et al v. United States Cellular Corporation	1:13-cv-01672	D.Del.	2013-10-07	2014-05-21	—	
Intellectual Ventures I LLC et al v. Leap Wireless International Inc. et al	1:13-cv-01669	D.Del.	2013-10-07	2014-05-21	—	
Intellectual Ventures I LLC et al v. Manufacturers and Traders Trust Company	1:13-cv-01274	D.Del.	2013-07-24	2014-02-05	—	
Intellectual Ventures I LLC et al v. Ricoh Company Ltd. et al	1:13-cv-00474	D.Del.	2013-03-25	2014-02-03	—	
Intellectual Ventures I LLC et al v. Toshiba Corporation et al	1:13-cv-00453	D.Del.	2013-03-20	2014-01-02	—	

EXHIBIT K

REDACTED
IN ITS
ENTIRETY